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IC 27-8-19.8

Chapter 19.8. Viatical Settlements

IC 27-8-19.8-1

"Applicant" defined

Sec. 1. As used in this chapter, "applicant" refers to a person that applies for a viatical settlement provider license under this chapter.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.1; P.L.223-2005, SEC.3.

IC 27-8-19.8-2

"Department" defined

Sec. 2. As used in this chapter, "department" refers to the department of insurance.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

IC 27-8-19.8-3

"Insured" defined

Sec. 3. As used in this chapter, "insured" refers to an individual whose life is the subject of insurance under a life insurance policy or contract.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.2; P.L.223-2005, SEC.4.

IC 27-8-19.8-4

Repealed

(Repealed by P.L.32-1998, SEC.32.)

IC 27-8-19.8-4.3

"Viatical settlement agent" defined

Sec. 4.3. As used in this chapter, "viatical settlement agent" means a person that solicits, offers, or attempts to negotiate a viatical settlement contract with a viator.

As added by P.L.32-1998, SEC.3.

IC 27-8-19.8-4.5

"Viatical settlement broker" defined

Sec. 4.5. As used in this chapter, "viatical settlement broker" means a person that represents a viator and for a fee, commission, or other valuable consideration, solicits, offers, or attempts to negotiate viatical settlements between a viator and one (1) or more viatical settlement providers.

As added by P.L.32-1998, SEC.4.

IC 27-8-19.8-5

"Viatical settlement provider" defined

Sec. 5. (a) As used in this chapter, "viatical settlement provider" means a person, other than a viator, that:

- (1) enters into a viatical settlement contract with a viator; or
- (2) obtains financing for the purchase, acquisition, transfer, or

other assignment of one (1) or more viatical settlement contracts, viaticated policies, or interests therein, or otherwise sells, assigns, transfers, pledges, hypothecates, or disposes of one (1) or more viatical settlement contracts, viaticated policies, or interests therein.

(b) The term does not include any of the following:

- (1) A bank, savings bank, savings association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan.
- (2) The issuer of a life insurance policy that makes a policy loan, permits surrender of the policy, or pays other policy benefits, including accelerated benefits, in accordance with the terms of the policy.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.5; P.L.79-1998, SEC.32.

IC 27-8-19.8-6

"Viatical settlement contract" defined

Sec. 6. As used in this chapter, "viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of a portion of the death benefit or ownership of a life insurance policy or contract for consideration that is less than the expected death benefit of the life insurance policy or contract. The term does not include the following:

- (1) A loan by an insurer under the terms of a life insurance policy, including a loan secured by the cash value of a policy.
- (2) An agreement with a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan.
- (3) The provision of accelerated death benefits by an insurer to an insured under the provisions of a life insurance contract.
- (4) Agreements between an insurer and a reinsurer.
- (5) An agreement by a person who enters into not more than one (1) such agreement in any five (5) year period to purchase a life insurance policy or contract for the transfer of a life insurance policy for a value that is less than the expected death benefit.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.6; P.L.128-2000, SEC.2.

IC 27-8-19.8-6.5

"Viaticated policy" defined

Sec. 6.5. As used in this chapter, "viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider under a viatical settlement contract.

As added by P.L.32-1998, SEC.7.

IC 27-8-19.8-7

"Person" defined

Sec. 7. As used in this chapter, "person" means an individual, an association, a corporation, a limited liability corporation, an estate, a partnership, a trust, or any other business or legal entity.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.8.

IC 27-8-19.8-7.8

"Stranger originated life insurance" defined

Sec. 7.8. (a) As used in this chapter, "stranger originated life insurance" means a practice or plan to initiate a life insurance policy for the benefit of a third party investor who, at the time the life insurance policy is originated, has no insurable interest in the insured.

(b) The term includes the following:

(1) An arrangement under which, at the time of life insurance policy inception:

(A) a life insurance policy is purchased with resources or guarantees from or through a person that is not legally permitted to initiate the life insurance policy; and

(B) a written or verbal arrangement or agreement is made to transfer the ownership of the life insurance policy or policy benefits to a third party.

(2) A trust that is:

(A) created to give an appearance of the existence of an insurable interest; and

(B) used to initiate a life insurance policy for an investor.

As added by P.L.112-2008, SEC.3.

IC 27-8-19.8-8

"Viator" defined

Sec. 8. As used in this chapter, "viator" refers to the owner of a life insurance policy or a certificate holder under a group policy that insures the life of an insured who enters or seeks to enter into a viatical settlement contract.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.9.

IC 27-8-19.8-8.5

Persons required to be licensed as insurance producer with life qualification

Sec. 8.5. The following must be licensed as an insurance producer with a life qualification under IC 27-1-15.6-7:

- (1) A viatical settlement broker.
- (2) A person who solicits, offers, or attempts to negotiate a viatical settlement contract with a viator.

As added by P.L.32-1998, SEC.10. Amended by P.L.132-2001, SEC.14; P.L.178-2003, SEC.71.

IC 27-8-19.8-8.6

Exemptions from licensing requirement

Sec. 8.6. The following are exempt from the licensing requirement under IC 27-8-19.8-8.5:

(1) An accountant, an attorney, or a financial planner retained to represent the viator, and whose compensation is paid directly by or at the direction of the viator.

(2) A regularly salaried officer or employee of a viatical settlement broker or viatical settlement provider, if the officer or employee's duties and responsibilities do not include the solicitation or negotiation of viatical settlement contracts.

(3) The following persons, to the extent that the person is engaged in the administration or operation of a program of employee benefits for the person's employees or the employees of the person's subsidiaries or affiliates involving the use of viatical settlement contracts issued by a licensed viatical settlement provider, if the person is not in any manner directly or indirectly compensated by the viatical settlement provider:

- (A) An employer.
- (B) An officer or employee of an employer.
- (C) A trustee of an employee trust plan.

As added by P.L.32-1998, SEC.11.

IC 27-8-19.8-8.7

Fiduciary duties of viatical settlement brokers

Sec. 8.7. A viatical settlement broker:

- (1) represents only the viator; and
 - (2) owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator;
- regardless of the manner in which the viatical settlement broker is compensated.

As added by P.L.32-1998, SEC.12.

IC 27-8-19.8-9

License required for viatical settlement providers

Sec. 9. After December 31, 1998, a person may not act as a viatical settlement provider unless the person holds an unexpired license issued under this chapter.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.13.

IC 27-8-19.8-9.2

Insurance producer remuneration

Sec. 9.2. An insurance producer that:

(1) is licensed under IC 27-1-15.6; and

(2) sells a life insurance policy or contract that, less than two (2) years after the insurance producer sells the policy or contract, is the subject of a viatical settlement contract;

shall not accept a commission or other remuneration in connection with the viatical settlement contract.

As added by P.L.223-2005, SEC.5.

IC 27-8-19.8-10

Application and fee for license

Sec. 10. (a) An applicant must do the following to obtain a license as a viatical settlement provider:

(1) Apply for the license on forms prescribed by the department.

(2) Provide information required by the department.

(3) Pay the license fee.

(b) The application must include the name of each officer, member, or employee of the applicant who will be authorized by the applicant to act as a viatical settlement provider under the license if issued to the applicant.

(c) The department shall adopt rules under IC 4-22-2 to set the licensing fee required by this section.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.14.

IC 27-8-19.8-11

Investigation of applicant; issuance of license

Sec. 11. The department shall investigate an applicant and issue a license to the applicant if the department finds all of the following:

(1) The applicant is competent and trustworthy and intends to act in good faith as a viatical settlement provider.

(2) The applicant has a good business reputation.

(3) The applicant has had the experience, training, or education to qualify the applicant as a viatical settlement

provider.

(4) If the applicant is a corporation, or limited liability corporation, it is either:

(A) incorporated under Indiana law; or

(B) authorized to do business in Indiana.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.15.

IC 27-8-19.8-12

Refusal to issue license

Sec. 12. The department may refuse to issue a license to an applicant if the department is not satisfied that any officer, employee, partner, or stockholder who could materially influence the applicant's conduct meets the standards of this chapter.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

IC 27-8-19.8-13

Nonresident licenses

Sec. 13. The department may not issue a license to an applicant who is not an Indiana resident unless the applicant does either of the following:

(1) Files and maintains with the department a written designation of an agent for service of process.

(2) Files with the department the applicant's written irrevocable consent that any action against the applicant may be begun against the applicant by the service of process on the department.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

IC 27-8-19.8-14

Individuals authorized to act as viatical settlement benefits providers

Sec. 14. A license issued under this chapter authorizes all officers, members, and employees of the license holder designated under section 10(b) of this chapter to act as viatical settlement providers under the license.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.16.

IC 27-8-19.8-15

Expiration and renewal of license

Sec. 15. (a) A license issued or renewed under this chapter expires on July 1 after its issuance or renewal.

(b) A viatical settlement provider may renew a license by:

(1) applying for renewal on forms prescribed by the department; and

(2) paying the renewal fee.

(c) The department shall adopt rules under IC 4-22-2 to do the following:

(1) Set the renewal fee required by this section.

(2) Set a date before July 1 and before which receipt of a license renewal application can be processed without a lapse in the license.

(d) A viatical settlement provider that submits an application for renewal after the date set under subsection (c)(2):

(1) is not entitled to have the license renewed before July 1; and

(2) may not act as a viatical settlement provider until the department issues the license renewal, if the department is unable to process the renewal before July 1.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.17.

IC 27-8-19.8-16

Disclosure of identity of individuals associated with viatical settlement providers

Sec. 16. The department may at any time require a viatical settlement provider or an applicant for a license to disclose fully the identity of all of the viatical settlement provider's or applicant's officers, employees, partners, and stockholders.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.18.

IC 27-8-19.8-17

Annual reports

Sec. 17. (a) A viatical settlement provider shall file with the department an annual report containing information prescribed in rules adopted by the department under IC 4-22-2.

(b) The rules adopted by the department under subsection (a) shall set the date by which annual reports must be submitted.

(c) A viatical settlement provider shall maintain records of each viatical settlement at least five (5) years after the death of the insured.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.19.

IC 27-8-19.8-18

Examination of viatical settlement provider or applicant

Sec. 18. (a) When the department reasonably considers it necessary for the protection of the public, the department may examine the business and other affairs of a viatical settlement provider or an applicant.

(b) The department may order a viatical settlement provider or an applicant to produce records, books, files, or other information reasonably necessary to ascertain whether the viatical settlement provider or the applicant has violated or is violating the law or otherwise has acted or is acting contrary to the public interest.

(c) The viatical settlement provider or applicant shall pay the expenses of an examination conducted under this

section.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.20.

IC 27-8-19.8-19

Suspension, revocation, or refusal to renew license

Sec. 19. After a hearing under IC 4-21.5, the department may suspend, revoke, or refuse to renew a viatical settlement provider's license, or impose a civil penalty, or both, if the department finds any of the following:

- (1) There was a misrepresentation in the application for the license.
- (2) The viatical settlement provider is untrustworthy or incompetent to act as a viatical settlement provider.
- (3) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators.
- (4) The viatical settlement provider has been convicted of, or pleaded guilty or nolo contendere to, an offense the definition of which includes fraudulent acts as an element of the offense regardless of whether a judgement has been entered by the court.
- (5) The viatical settlement provider no longer meets the requirements for initial licensure.
- (6) The viatical settlement provider has failed to honor the contractual obligations of a viatical settlement contract.
- (7) The viatical settlement provider has violated this chapter.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.21.

IC 27-8-19.8-20

Repealed

(Repealed by P.L.32-1998, SEC.32.)

IC 27-8-19.8-20.1

Stranger originated life insurance; prohibition

Sec. 20.1. (a) A person shall not issue, solicit, market, or otherwise promote the purchase of a life insurance policy in connection with stranger originated life insurance.

(b) A violation of this section is an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4.

As added by P.L.112-2008, SEC.4.

IC 27-8-19.8-21

Required terms of viatical settlement contract

Sec. 21. (a) A viatical settlement contract must establish the terms under which the viatical settlement provider will pay value, in return for the viator's assignment, bequest, devise, sale, or transfer of the death benefit, certificate, or

ownership of the insurance policy to the viatical settlement provider.

(b) A viatical settlement contract must provide for the unconditional rescission of the contract by the viator for the longer of the following:

(1) the period ending not more than fifteen (15) days after the receipt of the viatical settlement proceeds by the viator; or

(2) the period ending not more than thirty (30) days after execution of the contract.

(c) A viatical settlement contract is rescinded if the insured dies during the rescission period, subject to repayment to the viatical settlement provider of all proceeds and any premiums, loans, and loan interest that have been paid by the viatical settlement provider.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.22; P.L.223-2005, SEC.6.

IC 27-8-19.8-22

Form for viatical settlement contract

Sec. 22. (a) A person may not use a viatical settlement contract form or a disclosure form in Indiana unless the contract form or disclosure form has been filed with and approved by the department.

(b) A viatical settlement contract form or disclosure form filed with the department is considered approved if the department has not disapproved the form within sixty (60) days after the filing.

(c) The department shall disapprove a viatical settlement contract form or disclosure form if the department finds that the contract form, disclosure form, or the provisions of the contract are:

(1) misleading or unfair to the viator;

(2) not in compliance with this chapter; or

(3) otherwise contrary to the public interest.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.23.

IC 27-8-19.8-23

Required disclosures to viator; information to insured

Sec. 23. (a) A viatical settlement provider or viatical settlement broker shall, not later than the date of application, provide to a viator a brochure approved by the commissioner and describing the viatical settlement process. If a brochure describes only a viatical settlement contract in which the insured does not have a catastrophic or life threatening illness or condition, the brochure may use the term "life settlement" in place of the term "viatical settlement".

(b) A viatical settlement provider or viatical settlement broker shall, in a separate document that is signed by the

viator and the viatical settlement provider or viatical settlement broker, disclose the following information to the viator not later than the date of application:

(1) Possible alternatives to viatical settlement contracts, including accelerated benefits or policy loans offered by the issuer of the life insurance policy.

(2) Federal and state tax consequences that may result from entering into a viatical settlement contract, and that the viator should seek assistance from a professional tax advisor.

(3) Possible:

(A) adverse effect on eligibility for; or

(B) interruption of assistance provided by;

medical or public assistance programs as a consequence of entering into a viatical settlement contract, and that the viator should seek advice from the appropriate government agencies.

(4) The viator's right to rescind a viatical settlement contract as provided in section 21 of this chapter.

(5) The amount of any fees paid by a viatical settlement provider to a viatical settlement broker.

(6) A statement that proceeds of the viatical settlement could be subject to claims of creditors.

(7) A statement that:

(A) entering into a viatical settlement contract may cause other rights or benefits under the policy, including conversion rights, waiver of premium benefits, family riders, or coverage of a life other than the insured, to be forfeited by the viator; and

(B) the viator should seek advice from a financial advisor.

(8) The procedure for contacts with the insured.

(9) That the proceeds of the viatical settlement will be transferred to the viator as provided in section 24.2 of this chapter.

(10) A statement containing the following language:

"All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

(11) That the insured may be contacted by the viatical settlement provider or viatical settlement broker to determine the health status of the insured in accordance with section 24.9 of this chapter.

(c) The viatical settlement provider shall disclose the following information to the viator, conspicuously displayed in

the viatical settlement contract or in a separate document signed by the viatical settlement provider and the viator, before a viatical settlement contract is signed:

(1) Any affiliation between the viatical settlement provider and the insurer that issued the life insurance policy or certificate that is the subject of the viatical settlement contract.

(2) The name, address, and telephone number of the viatical settlement provider.

(3) If the life insurance policy or certificate that is the subject of the viatical settlement contract was issued as a joint policy or includes family riders or any coverage of an individual other than the insured:

(A) the possible loss of coverage of the other individuals under the policy or certificate; and

(B) that the viator should consult with the viator's insurance producer or the insurer that issued the policy or certificate for advice concerning the proposed viatical settlement contract.

(4) The:

(A) dollar amount of the current death benefit payable to the viatical settlement provider; and

(B) if known, the:

(i) availability of any additional guaranteed insurance benefits;

(ii) dollar amount of any accidental death and dismemberment benefits; and

(iii) viatical settlement provider's interest in the benefits described in items (i) and (ii);

under the policy or certificate.

(5) The:

(A) name, business address, and telephone number of the trustee or escrow agent described in section 24.2 of this chapter; and

(B) right of the viator or insured to inspect or receive copies of the relevant escrow or trust agreements or documents.

(d) A viatical settlement broker shall disclose to the viator, conspicuously displayed in the viatical settlement contract or in a separate document signed by the viatical settlement broker and the viator before a viatical settlement contract is signed, the amount and method of calculation of the viatical settlement broker's compensation.

(e) If a viatical settlement provider transfers ownership or changes the beneficiary of a viaticated policy, the viatical settlement provider shall, not more than twenty (20) days after the transfer or change occurs, inform the insured of the transfer or change.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.24; P.L.223-2005, SEC.7.

IC 27-8-19.8-24

Prerequisites to viatical settlement contract

Sec. 24. A viatical settlement provider shall obtain the following before entering into a viatical settlement contract:

(1) If the viator is the insured, a written statement from a licensed attending physician that the insured is of sound mind and under no constraint or undue influence.

(2) A document signed by the viator and witnessed by two (2) disinterested witnesses in which the viator does the following:

(A) Consents to the viatical settlement contract.

(B) If the insured has a catastrophic or life threatening illness or condition, acknowledges the catastrophic or life threatening illness or condition.

(C) Represents that the viator has a full and complete understanding of the viatical settlement contract.

(D) Represents that the viator has a full and complete understanding of the benefits of the life insurance policy.

(E) Acknowledges that the viator has entered into the viatical settlement contract freely and voluntarily.

(F) Discloses the identity of any person that served as a viatical settlement broker in connection with the viatical settlement contract.

(3) A document in which the insured consents to the release of the insured's medical records.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70. Amended by P.L.32-1998, SEC.25; P.L.223-2005, SEC.8.

IC 27-8-19.8-24.2

Payment of proceeds of settlement to trust or escrow account; transfer of proceeds of settlement to viator

Sec. 24.2. (a) Immediately upon a viatical settlement provider's receipt of a signed viatical settlement contract, the viatical settlement provider shall pay the proceeds of the viatical settlement to a trust or escrow account in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. The account shall be managed by a trustee or escrow agent independent of the parties to the contract.

(b) Within two (2) business days after the viatical settlement provider's receipt of the insurer's or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated according to the viatical settlement contract, the trustee or escrow agent shall transfer the proceeds to the viator.

As added by P.L.32-1998, SEC.26.

IC 27-8-19.8-24.7

Disclosure of identity of viator

Sec. 24.7. Except as otherwise provided by law, a person with actual knowledge of a viator's identity may not disclose that identity to another person unless the disclosure is:

(1) necessary to effect a viatical settlement contract and the viator has provided written consent to the disclosure;

(2) provided in response to an investigation by the commissioner or other governmental officer or agency; or

(3) in connection with a transfer of a viatical settlement contract or viaticated policy to another licensed viatical settlement provider or to an entity that provides financing to effect the viatical settlement contract under a written agreement with a licensed viatical settlement provider.

As added by P.L.32-1998, SEC.27.

IC 27-8-19.8-24.8

Applicability of IC 16-39 to release of insured's medical records

Sec. 24.8. IC 16-39 applies to the release of an insured's medical records under this chapter.

As added by P.L.32-1998, SEC.29.

IC 27-8-19.8-24.9

Contacts with insured for purpose of determining health status

Sec. 24.9. (a) The viatical settlement provider or viatical settlement broker may contact the insured for the purpose of determining the health status of the insured not more than:

(1) one (1) time every three (3) months for an insured with a life expectancy of more than one (1) year; or

(2) one (1) time every month for an insured with a life expectancy of not more than one (1) year.

(b) Contacts made with an insured under subsection (a) must be made by mail unless the parties agree to another method of contact.

As added by P.L.32-1998, SEC.28.

IC 27-8-19.8-25

Standards for evaluation of reasonableness of payments under viatical settlement contract

Sec. 25. The department may adopt rules under IC 4-22-2 to establish standards for evaluating the reasonableness of payments under viatical settlement contracts, including regulation of discount rates used to determine the amount paid in exchange for an assignment, a bequest, a devise, a sale, or a transfer of a benefit under a life insurance policy.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

Amended by P.L.32-1998, SEC.30.

IC 27-8-19.8-26

Adoption of rules

Sec. 26. The department may adopt rules under IC 4-22-2 that the department considers necessary to implement this chapter.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.
